REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

NESTLE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10276

Members:

RINGPIS-LIBAN, *Chairperson and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
MAR 04 2024
11:10 a.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is petitioner's **Motion for Reconsideration (of the Decision promulgated on 6 October 2023)** filed on October 26, 2023, without respondent's comment, per Records Verification dated January 22, 2024.

On October .6, 2023, the Court promulgated a Decision denying petitioner's claim for refund of excise tax on sweetened beverages in the amount of Php1,266,599,459.91, for petitioner's failure to prove that the said tax were erroneously or illegally collected by respondent, the dispositive portion of which states as follows:

> "**WHEREFORE**, in light of the foregoing disquisitions, the present *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED**."

In its Motion, petitioner primarily assails the Court's Decision in classifying its MILO products as "sweetened beverages" based on the finding that such are non-alcoholic beverages that contain sugar, which is widely known as a substance that is sweet. Conversely, Petitioner argues that the mere presence of sugar in a beverage does not automatically qualify a beverage as a "sweetened beverage", and that the Court failed to consider that milk is also among MILO's essential ingredients.

Petitioner expounds that the term "non-alcoholic beverage" in the definition of "sweetened beverages" has a technical meaning referenced to Codex Stan 192-1995 and is not based simply on the presence of a sweetener, such as sugar, in the beverage. Petitioner insists that it is clear from the descriptor of the Codex food category 01.1.4 that chocolate malt drinks, such as the MILO Products, are flavored milk even if it contains cocoa and sugar. Furthermore, petitioner asserts that it is clear from the text of Section 150-B of the National Internal Revenue Code ("NIRC") of 1997, as well as the legislative intent behind it that all milk products are not subject to excise tax on sweetened beverages regardless of the sugar content.

Lastly, petitioner claims that if Section 150-B(B)(1) of the NIRC of 1997, defining sweetened beverages, and Section 150-B(C) of the same code, providing for exclusions from excise tax on sweetened beverages, are read in relation to Codex Stan 192-1995, it is clear that even sweetened milk products are excluded from the coverage of the said excise tax.

The Court finds petitioner's Motion for Reconsideration bereft of merit. Notably, the arguments proffered by petitioner in its Motion are essentially rehashes of its previous arguments that have already been considered, weighed, and resolved by the Court in the Decision it assails.

Again, the present case is a claim for refund of sweetened beverage excise tax or "SBT" (sweetened beverage tax) on petitioner's MILO products based on respondent's alleged illegal collection and petitioner's erroneous payment. As such, it is an age-old rule that the one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing. Mere allegation is not evidence.[1] The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund. This is the reason why the claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim.[2] As held by the Supreme Court in *Smart Communications, Inc. v. The City of Davao,* to wit:[3]

> "However, as previously held by the Court, both in their nature and effect, there is no essential difference between a tax exemption and a tax exclusion. An exemption is an immunity or a

[1] *Dionarto Q. Noblejas v. Italian Maritime Academy Phil., Inc., et al.,* G.R. No. 207888, June 09, 2014.
[2] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue,* G.R. No. 206526, January 28, 2015.
[3] G.R. No. 155491, September 16, 2008.

privilege; it is the freedom from a charge or burden to which others are subjected. An exclusion, on the other hand, is the removal of otherwise taxable items from the reach of taxation, e.g., exclusions from gross income and allowable deductions. An exclusion, is thus, also an immunity or privilege which frees a taxpayer from a charge to which others are subjected. Consequently, the rule that a tax exemption should be applied strictissimi juris against the taxpayer and liberally in favor of the government applies equally to tax exclusions."

Herein, the exclusions enumerated under Section 150-B(C)(1) of the NIRC of 1997, as amended by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion Act (TRAIN Law), expressly refer to the products described in the **food category from the Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev. 2017 or the latest), as adopted by the FDA**. However, there is nothing in the records that establishes that the FDA had already adopted the Codex Stan 192-1995, Rev. 2017 at the time of removal of MILO products from petitioner's plants from **May 1 to December 31, 2018**. In fact, it was only on **August 1, 2019** that the food category system and descriptor of the General Standard for Food Additives (Codex Stan 192-1995, Rev. 2018) was adopted pursuant to Department of Health Circular No. 2019-0319[4] issued by then Secretary of Health Francisco T. Duque, III.

Correspondingly, the rule for excise tax on domestic products in general is that the return is filed and the excise tax is paid by the manufacturer or producer ***before*** removal of the products form the place of production. As such, **the <u>date of payment of excise tax on domestic products</u> depends on <u>the date of actual removal of the taxable domestic products from the place of production</u>.**[5] Going back to the present case, during the period subject of petitioner's claim for refund, specifically from **May 1 to December 31, 2018**, no exclusion can be considered on the removal of MILO products from petitioner's Lipa plant and its co-manufacturers' plants. Thus, there was no erroneous payment or illegal collection of excise taxes to speak of.

Nonetheless, assuming arguendo that the Codex Stan 192-1995, Rev. 2017 or the latest, as adopted by the FDA, may be given retroactive effect, the subject MILO products are still subject to SBT since, as already explained by the Court in the assailed Decision, the subject MILO products cannot outrightly be categorized as flavored fluid milk drinks considering that the same can also be categorized as cocoa-sugar mix, to wit:

> "A reading of the General Standard for Food Additives (Codex Stan 192-1995, Rev. 2018)[6] Codex Alimentarius

[4] Docket, Exhibit "P-34", pp. 3245 to 3246.
[5] *Commissioner of Internal Revenue v. San Miguel Corporation, et al.,* G.R. No. 180740 and 180910, November 11, 2019.
[6] Docket, Exhibit "P-14", pp. 2560 to 3033.

International Food Standards, as adopted by the FDA, Annex B, Part I and Part II states, to wit:

'FOOD CATEGORY SYSTEM

PART I: Food Category System

01.0	Dairy products and analogues, excluding products of food category 02.0
01.1	Fluid Milk and Milk Products
01.1.1	Fluid Milk (plain)
01.1.2	Other Fluid Milk (plain)
01.1.3	Fluid Buttermilk
01.1.4	Flavoured Fluid Milk Drinks

x x x

PART II: Food Category Descriptors

01.1.4 **Flavoured fluid milk drinks**

Includes all mixes and ready-to-drink fermented or not fermented milk-based drinks with flavourings and/or food ingredients that intentionally impart flavor, excluding **mixes for cocoa (cocoa-sugar mixtures, category 05.1.1)**. Examples, include but are not limited to, chocolate milk, **chocolate malt drinks**, strawberry-flavoured yoghurt drink, lactic acid bacteria drinks, whey-based drinks, and lassi (liquid obtained by whipping curd from the lactic acid fermentation of milk, and mixing with sugar or intense sweetener).'

Based on the foregoing, all flavoured fluid milk drinks shall include all mixes and ready-to-drink fermented or not fermented milk-based drink with flavourings and/or food ingredients that intentionally impart flavor, however, excluding mixes for cocoa (cocoa-sugar mixtures, category 05.1.1). Relevantly, category 05.1.1 pertains to cocoa sugar mix (powder), while the succeeding category thereto, or 05.1.2, pertain to cocoa sugar mix (syrup). **Thus, while it can be said that flavoured fluid milk includes all types of mixes, whether powder or syrup, it specifically did not include cocoa sugar mix.**

An examination of the ingredients of the MILO products mentioned in the FDA Certificates presented by petitioner clearly shows that, while the said products have malt as one of its ingredients and is marketed by petitioner as a choco malt powdered milk drink, cocoa and/or cocoa powder and sugar are likewise present in the said MILO products.

Such being the case, **the MILO products subject of the present petition cannot outrightly be categorized as fluid flavoured milk drinks as the same can also be categorized as cocoa-sugar mix.** Simply put, such cocoa-sugar mixtures cannot be considered as covered by the exclusion under Section 150-B(C)(1) of the NIRC of 1997, as amended by RA No. 10963. Being cocoa-sugar mixtures, the MILO products are not excluded from SBT."

Time and again, the Court has held that the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[7] Any doubt whether a tax exemption exists is resolved against the taxpayer.[8] Taxation is the rule and exemption is the exception. Exemptions must be shown to exist clearly and categorically, and supported by clear legal provision.[9]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on October 6, 2023.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (of the Decision promulgated on 6 October 2023) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I Concur:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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7 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, G.R. No. 188497, April 25, 2012.
8 *Digital Telecommunications Philippines, Inc. v. Cantos,* G.R. No. 180200, November 25, 2013.
9 *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue (BIR), et al.*, G.R. No. 172087, March 15, 2011.